

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Appellant: Shigeki Matsumoto
Appl. No.: 09/934,192
Filed: August 21, 2001
For: DATA COMMUNICATION SYSTEM AND DATA
COMMUNICATION METHOD
Art Unit: 2457
Examiner: Burgess, Barbara N.
Confirmation No.: 7724

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DeAndre Bresland
(Name of person signing transcript)

Signature
May 14, 2009
Date of Signature

APPEAL BRIEF

Appeal Briefs-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Notice of Panel Decision dated April 15, 2009, having a one-month period for response set to expire on May 15, 2009, Appellant submits herewith an Appeal Brief and an electronic payment in the amount of \$540.00 as payment of the requisite fee set forth in 37 C.F.R. §41.20(b)(2).

i REAL PARTY IN INTEREST

The real party in interest is Sony Corporation, a Japanese Corporation with offices at 7-35 Kitashinagawa 6-chome, Shinagawa-ku, Tokyo, 141-0001 Japan. The assignment of this application is recorded in the United States Patent and Trademark office on August 21, 2001, at Reel 012112 and Frame 0959.

ii RELATED APPEALS AND INTERFERENCES

Upon information and belief, the undersigned attorney does not believe that there is any appeal or interference that will directly affect, be directly affected by or have a bearing on the Board's decision in the pending appeal.

iii STATUS OF THE CLAIMS

This application was filed in the U.S. Patent Office with claims 1-8 on August 21, 2001 and assigned Application Serial No. 09/934,192. This application claims the benefit of Japanese Patent Application No. JP/2000-252892 filed on August 23, 2000.

A Non-Final Office Action was issued on November 5, 2004, rejecting claims 1-8. Claims 1-8 were rejected under 35 U.S.C. §102(b) as allegedly anticipated by European Patent Application 0 865 192 A2 to Yamakita (hereinafter, merely "Yamakita").

Appellant filed a reply on February 7, 2005. The response amended claims 1 and 5.

A Final Office Action was issued on May 19, 2005, rejecting claims 1-8. Claims 1-8 were again rejected under 35 U.S.C. §102(b) as allegedly anticipated by Yamakita.

Appellant filed a reply on July 11, 2005. The response amended claims 1 and 5.

An Advisory Action was issued on August 15, 2005.

Appellant filed a Request for Continued Examination August 19, 2005.

A Non-Final Office Action was issued on April 18, 2006, rejecting claims 1-8.

Claims 1-8 were rejected under 35 U.S.C. §103(a) as allegedly anticipated by Yamakita in view of U.S. Patent No. 6,092,114 to Shaffer, et al. (hereinafter, merely “Shaffer”).

Appellant filed a reply on July 14, 2006. The response amended claims 1 and 5.

A Final Office Action was issued on October 11, 2006, rejecting claims 1-8.

Claims 1-8 were rejected under 35 U.S.C. §103(a) as allegedly anticipated by Yamakita in view of Shaffer and further in view of U.S. Publication No. 2006/0143307 to Codignotto (hereinafter, merely “Codignotto”).

Appellant filed a reply on December 7, 2006. The response amended claims 1 and 5.

An Advisory Action was issued on January 10, 2007.

Appellant filed a reply with a Request for Continued Examination February 14, 2007. The response amended claims 1 and 5.

A notice of Abandonment was mailed by the USPTO on November 1, 2007.

Appellant filed a petition to withdraw the notice of abandonment on November 9, 2007

Appellant filed a reply on July 14, 2006. The response amended claims 1 and 5.

A Non-Final Office Action was issued on June 2, 2008, rejecting claims 1-8.

Claims 1-8 were rejected under 35 U.S.C. §103(a) as allegedly anticipated by Yamakita in view of Shaffer and further in view of Codignotto.

Appellant filed a reply on August 27, 2008. The response amended claims 1 and 5.

A Final Office Action was issued on June 2, 2008, rejecting claims 1-8. Claims 1-8 were rejected under 35 U.S.C. §103(a) as allegedly anticipated by Yamakito and Shaffer and further in view of Codignotto and further in view of U.S. Patent No. 6,449,634 to Capiel (hereinafter, merely "Capiel").

Notice of Appeal and Pre-Appeal Brief Request for Review on February , 2009.

A Notice of Panel Decision for Pre-Appeal Brief Review was issued on April 15, 2009.

This Appeal Brief is being filed pursuant to the Notice of Panel Decision for Pre-Appeal Brief Review.

Accordingly, the status of the claims may be summarized as follows:

Claims Allowed:	None.
Claims Rejected:	1-8.
Claims Appealed:	1-8.
Claims Canceled:	None.

The rejected claims 1-8 are set forth in the Appendix attached hereto.

Appellant appeals the Final Rejection of claims 1-8, which constitute all of the currently pending claims in this application.

iv STATUS OF THE AMENDMENTS

Appellant believes that all the submitted amendments to the claims have been entered.

v SUMMARY OF THE CLAIMED SUBJECT MATTER

A. Brief Summary of the Invention

The claimed invention is directed to a system that allows a user to take a picture, add a processing command at the time of taking the picture, and then send the picture with the text command to a relay server. The processing command instructs the relay server to process the picture as instructed by the command. When the processing command has been predetermined at the relay server, the command may be unique to a camera or transmitting electronic device.

Appellant submits that the above-identified features are not taught or suggested by the art used as a basis of rejection.

B. Detailed Summary of Each Independent Claim

Independent claims 1 and 5 are summarized below. Each of the independent claims 1 and 5 is directed to a system that allows a user to take a picture, add a processing command at the time of taking the picture, and then send the picture with the text command to a relay server.

Citations to Figures and Specification locations are provided; citations to published application are provided in [brackets]. However, such citations are provided merely as examples and are not intended to limit the interpretation of the claims or to evidence or create any estoppel.

Independent Claim 1

Independent claim 1 is directed to a data communication system [Figure 1] for sending and receiving e-mail between electronic devices [Figure 1, elements 4, 5, and 6] by

an e-mail system [Figure 1, elements 2 and 3] using a transmission control protocol/Internet protocol (TCP/IP) as a communication protocol, said data communication system comprising:

a transmitting electronic device [Figure 1, elements 4 and 6] including at least an e-mail sending/receiving function for attaching obtained original data to the e-mail, adding a processing command, and sending the e-mail to a network; and [paragraph [0020]]

a relay server [Figure 1, element 3, see paragraph [0020]] for receiving the e-mail sent from said transmitting electronic device, processing the original data attached to the e-mail based on the added processing command, attaching the processed data to the e-mail, and sending the e-mail to a receiving electronic device, [paragraph [0031]]

wherein said processing command is added to the obtained original data at the time the obtained original data is obtained, and [paragraph [0027]]

wherein the processing command indicates an instruction for editing the attached obtained original data, and [paragraph [0028] and Table 1]

wherein the processing commands are described in text format, and [paragraph [0028] and Figure 2]

wherein a unique processing command for the transmitting electronic device is processed when the unique processing command is predetermined between the transmitting electronic device and the relay server. [paragraph [0029] and paragraph [0042]]

Independent Claim 5

Independent claim 5 is directed to a data communication system [Figure 1] for sending and receiving e-mail between electronic devices [Figure 1, elements 4, 5, and 6] by

an e-mail system [Figure 1, elements 2 and 3] using a transmission control protocol/Internet protocol (TCP/IP) as a communication protocol, said data communication method comprising the steps of:

attaching original data obtained in a transmitting electronic device [Figure 1, elements 4 and 6] to the e-mail, adding a processing command, and sending the e-mail from said transmitting electronic device to a network; [paragraph [0020]]

receiving the e-mail sent from said transmitting electronic device by a relay server on said network, [Figure 1, element 3, see paragraph 0020]] processing the original data attached to the e-mail based on the added processing command, attaching the processed data to the e-mail, and sending the e-mail to a receiving electronic device; and [paragraph 0031]]

adding said processing command to the obtained original data at the time the obtained original data is obtained, and [paragraph [0027]]

wherein the processing command indicates an instruction for editing the attached obtained original data, and [paragraph [0028] and Table 1]

wherein the processing commands are described in text format, and [paragraph [0028] and Figure 2]

processing a unique processing command for the transmitting electronic device when the unique processing command is predetermined between the transmitting electronic device and the relay server. [paragraph [0029] and paragraph [0042]]

vi **GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

Claims 1-8 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over European Patent Application 0 865 192 A2 to Yamakita (hereinafter, merely “Yamakita”) in

view of U.S. Patent No. 6,092,114 to Shaffer, et al. (hereinafter, merely “Shaffer”) and further in view of U.S. Publication No. 2006/0143307 to Codignotto (hereinafter, merely “Codignotto”) and further in view of U.S. Patent No. 6,449,634 to Capiel (hereinafter, merely “Capiel”).

vii ARGUMENTS

Response to Rejections Under 35 U.S.C. §103(a)

A. **INDEPENDENT CLAIMS**

Claim 1 recites, *inter alia*:

“...a relay server for receiving the e-mail sent from said transmitting electronic device, processing the original data attached to the e-mail based on the added processing command, attaching the processed data to the e-mail, and sending the e-mail to a receiving electronic device,

wherein said processing command is added to the obtained original data at the time the obtained original data is obtained, and

wherein the processing command indicates an instruction for editing the attached obtained original data...

...wherein a unique processing command for the transmitting electronic device is processed when the unique processing command is predetermined between the transmitting electronic device and the relay server.”
(Emphasis Added)

Appellant submits that Yamakita, Shaffer, Codignotto, Capiel fail to teach or suggest the handling of unique processing commands. Furthermore, Yamakita, Shaffer, Codignotto, and Capiel fail to teach or suggest that a unique processing command for the

transmitting electronic device is processed when the unique processing command is predetermined between the transmitting electronic device and the relay server.

The Office Action concedes that the combination of Yamakita, Schaffer, and Codignotto does not teach or suggest the above-identified features of claim 1. The Office Action relies on Capiel to teach that “wherein a unique processing command for the transmitting electronic device is processed when the unique processing command is predetermined between the transmitting electronic device and the relay server”, as recited in claim 1.

Appellant respectfully disagrees.

In Capiel, when the server receives an image tag from the transmitting electronic device, the server looks to database information on the client that the email will be sent to, such as email client profile, software type, version, and whether the client can display certain documents.

The email is then sent to the client in such a way that the client’s software can display the e-mail.

Appellant submits that such disclosure in Capiel does not render claim 1 unpatentable. There are no unique processing command in Capiel that has been predetermined between the transmitting electronic device and the relay server as recited in claim 1.

Claim 1 recites that a unique processing command is processed when the unique processing command is **predetermined between the transmitting electronic device and the server.** See paragraph [0042].

Capiel teaches the use of database information concerning the client that is to receive the email and NOT the transmitting electronic device.

See Figure 4 of Capiel.

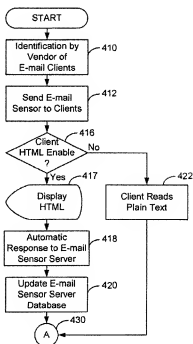


FIG. 4.

Appellant respectfully submits that nothing has been found in Yamakita, Shaffer, or Codignotto, taken alone or in combination, that would teach or suggest the above-identified features of claim 1.

Specifically, Appellant respectfully submits that Yamakita, Shaffer, Codignotto, and Capiel fail to disclose or suggest that a unique processing command for the transmitting electronic device is processed when the unique processing command is predetermined between the transmitting electronic device and the relay server, as recited in claim 1.

Therefore, Appellant submits that claim 1 is patentable.

For similar, or somewhat similar, reasons regarding claim 1, independent claim 5 is also patentable.

B. DEPENDENT CLAIMS

The other claims in this application are each dependent from one of the independent claims discussed above, and are therefore patentable for at least the same reasons.

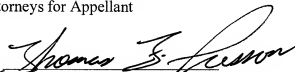
CONCLUSION

For the reasons discussed above, claims 1-8 are patentable. It is, therefore, respectfully submitted that the Examiner erred in rejecting claims 1-8, and Appellant requests a reversal of these rejections.

The Commissioner is hereby authorized to charge any additionally required fee, or to credit any overpayment in such fees, to Deposit Account No. 50-0320.

Respectfully submitted,

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By 

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APPENDIX I

CLAIMS ON APPEAL

1. (Previously Presented) A data communication system for sending and receiving e-mail between electronic devices by an e-mail system using a transmission control protocol/Internet protocol (TCP/IP) as a communication protocol, said data communication system comprising:

a transmitting electronic device including at least an e-mail sending/receiving function for attaching obtained original data to the e-mail, adding a processing command, and sending the e-mail to a network; and

a relay server for receiving the e-mail sent from said transmitting electronic device, processing the original data attached to the e-mail based on the added processing command, attaching the processed data to the e-mail, and sending the e-mail to a receiving electronic device,

wherein said processing command is added to the obtained original data at the time the obtained original data is obtained, and

wherein the processing command indicates an instruction for editing the attached obtained original data, and

wherein the processing commands are described in text format, and

wherein a unique processing command for the transmitting electronic device is processed when the unique processing command is predetermined between the transmitting electronic device and the relay server.

2. (Original) A data communication system according to claim 1, wherein said electronic devices comprise an image pick-up device for capturing still image data as the obtained original data, and the processing command comprises an editing command for editing the still image data.

3. (Original) A data communication system according to claim 1, wherein the processing command is in a text format and is predetermined by an agreement between said transmitting electronic device and said relay server.

4. (Original) A data communication system according to claim 1, wherein said transmitting electronic device is connected to said network via communication means using Bluetooth standards.

5. (Previously Presented) A data communication method for sending and receiving e-mail between electronic devices by an e-mail system using a TCP/IP as a communication protocol, said data communication method comprising the steps of:

attaching original data obtained in a transmitting electronic device to the e-mail, adding a processing command, and sending the e-mail from said transmitting electronic device to a network;

receiving the e-mail sent from said transmitting electronic device by a relay server on said network, processing the original data attached to the e-mail based on the added processing command, attaching the processed data to the e-mail, and sending the e-mail to a receiving electronic device; and

adding said processing command to the obtained original data at the time the
obtained original data is obtained, and

wherein the processing command indicates an instruction for editing the
attached obtained original data, and

wherein the processing commands are described in text format, and
processing a unique processing command for the transmitting electronic device
when the unique processing command is predetermined between the transmitting electronic
device and the relay server.

6. (Original) A data communication method according to claim 5, wherein
said transmitting electronic device comprises an image pick-up device for capturing still
image data as the obtained original data, and the processing command comprises an editing
command for editing the still image data.

7. (Original) A data communication method according to claim 5, wherein
the processing command is in a text format and is predetermined by an agreement between
said transmitting electronic device and said relay server.

8. (Original) A data communication method according to claim 5, wherein said
transmitting electronic device is connected to said network via communication means using
Bluetooth standards

APPENDIX II

EVIDENCE

None

APPENDIX III

RELATED PROCEEDINGS

None